

stall, put his arm around Plaintiff's neck, and began choking him, causing Plaintiff to slip and fall. According to Plaintiff, Brandon landed on top of him and began punching Plaintiff in the side and face with a closed fist. Brandon then grabbed Plaintiff by the hair and tried to push his face into the shower floor while telling Plaintiff to put his hands behind his back. Plaintiff complied with Brandon's order. (Compl. 3-4, Doc. No. 1.)

According to Plaintiff, he suffered abrasions and swelling on the left side of his face and a black eye. Plaintiff asserts that he was not disciplined in relation to the shower incident. He seeks monetary damages. (Compl. 4.)

II. STANDARD OF REVIEW

Because Plaintiff is proceeding in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is "frivolous," "malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). In its frivolity review, the Court must determine whether the Complaint raises an "indisputably meritless legal theory," Denton v. Hernandez, 504 U.S. 25, 32 (1992), or is founded upon clearly baseless factual contentions, such as "fantastic or delusional scenarios," Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

III. DISCUSSION

"To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). "[T]he treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment." Helling v. McKinney, 509 U.S. 25, 31

(1993). In its prohibition of “cruel and unusual punishments,” the Eighth Amendment places restraints on prison officials, who may not, for example, use excessive physical force against prisoners. See Hudson v. McMillian, 503 U.S. 1, 1 (1992). Because of his status as a pretrial detainee, however, Plaintiff’s claim is evaluated under the Due Process Clause of the Fourteenth Amendment rather than under the Eighth Amendment standard applicable to convicted prisoners. See Bell v. Wolfish, 441 U.S. 520, 535 (1979).

The Due Process Clause “protects a pretrial detainee from the use of excessive force that amounts to punishment,” Graham v. Connor, 490 U.S. 386, 395 n.10 (1989), and is not “an incident of some other legitimate governmental purpose,” Bell, 441 U.S. at 538. In Kingsley v. Hendrickson, the Supreme Court held that the appropriate standard for a pretrial detainee’s excessive force claim is an objective one, requiring that a plaintiff must demonstrate “only that the force purposely or knowingly used against him was objectively unreasonable.” 135 S.Ct. 2466, 2473 (2015). In determining whether the force was objectively unreasonable, a court considers the evidence “from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight.” Id. (citing Graham, 490 U.S. at 396).

Plaintiff’s excessive use of force claim does not raise an “indisputably meritless legal theory.” See Denton, 504 U.S. at 32. Nor is it based upon clearly baseless factual contentions, such as “fantastic or delusional scenarios.” See Neitzke, 490 U.S. at 327-28. Accordingly, Plaintiff’s Complaint survives initial review.

IT IS, THEREFORE, ORDERED that:

1. The Clerk of Court shall send a copy of this Order and blank summons form to Plaintiff at his current address;

2. Plaintiff shall complete and return the summons form to the Clerk of Court within 15 days of entrance of this Order; and
3. Using the summons provided by Plaintiff, the Clerk shall prepare process for delivery and notify the United States Marshal who, pursuant to Fed. R. Civ. P. 4(c)(3), shall serve process upon the named Defendant.

SO ORDERED.

Signed: August 3, 2018

A handwritten signature in cursive script, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

